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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: O R D E R ::

Sarju Narayan Purohit	Vs.	Executive Engineer, PWD, Suratgarh & Ors.

S.B. CIVIL WRIT PETITION NO.2156/2006.

Date of Order :: 9th May 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Shishodia, for the petitioner.

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BY THE COURT:

The plaintiff-petitioner having been unsuccessful in the two courts below in his prayer for temporary injunction against laying of a road at village 2 KND Rawla, Tehsil Gharsana, seeks to question the order dated 02.01.2006 (Annex.10) passed by the Civil Judge (Junior Division), Gharsana rejecting his application for temporary injunction and the order dated 07.04.2006 (Annex.11) passed by the Additional District Judge, Anoopgarh rejecting his appeal.

The petitioner has filed a civil suit for perpetual injunction and moved an application for grant of temporary injunction with the submissions that the respondents have made all preparations for the road work at the disputed site that is inclusive of the land of Murabba No.93/44 in Kila Nos. 1, 10, 11, 20 and 21. The case of the petitioner has been that the aforesaid land alongwith other parcels of land, was allotted to his father and has since been recorded in his name; that earlier in the year 1978-79 his joint family was deprived of nearly 12 bighas of land for forcible laying of another road; and that because of political enmity, the respondents were now seeking to lay the road in Murabba No.93/44 that would destroy nearly 5 bighas of his land. The application for temporary injunction was opposed by the respondents with the submissions that in each of the aforesaid Kila Nos.1, 10, 11, 20 and 21 of Murabba No.93/44, the petitioner is having khatedari in only 18 biswas of the land apiece and remaining 2 biswas each is recorded as the land of way; and that the road is being laid on such land which is already sanctioned as the land of way and is not the khatedari land of the petitioner.

The learned trial court as well as the learned appellate court thoroughly considered the material available on record and found that the petitioner has no prima facie case in his favour particularly for the reason that in each of the aforesaid Kila Nos. 1, 10, 11, 20 and 21, land measuring 0.025 hectares was Government Land recorded as "Gair Mumkin Rasta", and the remaining 0.228 hectares of land in each of the aforesaid Kilas was recorded in the name of the petitioner; whereas in relation to various other kila numbers, land measuring 0.253 hectares has been recorded in the name of the petitioner. The learned courts below categorically found that 0.025 hectares of Government Land in each of the disputed Kila numbers was kept for way and when the road is being laid on the said land of way only, it does not result in infringement of any of the legal rights of the petitioner.

It has been vehemently contended by Mr. Shishodia learned counsel for the petitioner that the learned courts below have acted illegally in rejecting the application for temporary injunction and in dismissing the appeal and the impugned orders disclose error apparent on the face of the record. Learned counsel submitted that the alternative road passing through Murabba Nos. 93/17,

93/18, 93/19 and 93/25 is already existing and, therefore, there is no occasion to provide for another road. Learned counsel further submitted that the “Rasta” in question is only a 'Khet Rasta' that is meant for approaching the agricultural field of the petitioner and cannot be said to be available for laying of a public road.

Having heard learned counsel for the petitioner and having perused the material placed on record and having examined the considerations adopted by the learned courts below, this Court is satisfied that no case for interference in the writ jurisdiction of this Court is made out so as to substitute the discretion exercised by the two courts below in refusing temporary injunction.

The orders passed by the learned courts below are based on thorough consideration of the entire material available on record and are neither perverse nor suffer from any error or illegality. Even then, for appreciating the submissions of the petitioner in this case, the copies of Jamabandies as placed on record have been examined and it is noticed from Jamabandi Annexure-9 that in Murabba No.93/44 in relation to Kila Nos. 1, 10 and 11 only 0.228 hectares of land has been recorded in khatedari; whereas for Kila Nos. 2 to 9 and 12 to 20, land measuring 0.253 hectares is recorded in khatedari. It is

also borne out that in Kila Nos.21, 22, 23, 24 and 25, only 0.127 hectares, 0.126 hectares, 0.127 hectares, 0.126 hectares and 0.152 hectares of land respectively is recorded as khatedari land. It is also borne out from Jamabandi Annexure-7 that a portion of land in the disputed Kila Nos. 1, 10, 11, 20 & 21 (0.025 hectares apiece) is recorded as "Gair Mumkin Rasta" and, therefore, the findings by the learned courts below appear to be correct.

The distinction sought to be drawn by the learned counsel in 'Gaon Rasta' and 'Khet Rasta' remains a pesudo-distinction in the context of the present case; and the submission that road could not laid on such 'Khet Rasta' remains totally meritless. Once the land is recorded as a land of way, it is for the Government to decide how to put it to the best and optimum use; and in respect of the land of way, the petitioner or for that matter any person cannot be held entitled to claim the same as his personal property nor the entry of 'Khet Rasta' invests the petiitoner with any personal right over and above the public rights. It remains a land of way whether recorded as 'Gaon Rasta' or 'Khet Rasta' and cannot be claimed as personal property by any individual. Even if it is a 'Khet Rasta', road work on the same could always be carried out

and the claim of the petitioner seeking to obstruct such road work does not appear to be well-founded.

So far the submissions of the petitioner about existence of alternative road are concerned, this Court is of opinion that it is not in the domain of the petitioner to suggest or insist that the Government cannot lay down a road or may not provide for more than one length of road unless the petitioner can show infringement of any of his legal right by such road work. No such infringement being available, even if another road is existing on other Murabbas, the petitioner is not entitled to seek injunction so as to obstruct laying of another road particularly when the road is being laid specifically on the land already recorded for 'Rasta".

Moreover, this Court is clearly of opinion that with amendment to the Code of Civil Procedure by the Amendment Act of 1999, the scope of interference in such interlocutory orders in the revisional jurisdiciton is taken away; and interference in the writ jurisdiction is called for only in the cases where the impugned order/orders could be said to be suffering from apparent error and resulting in manifest failure of justice or causing irreparable injury. Grant or refusal of temporary injunction being essentially a matter of judicial discretion of the trial court, such

discretion ordinarily does not call for any interference even by the appellate court unless the order impugned could be said to be arbitrary or capricious. In the present case, the two courts having concurrently ruled against the petitioner; no error on the face of the record being shown and the impugned order not leading to any failure of justice , there is no reason to interfere and there remains no force in this writ petition that deserves to be dismissed without being admitted.

As a result of the aforesaid, this writ petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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